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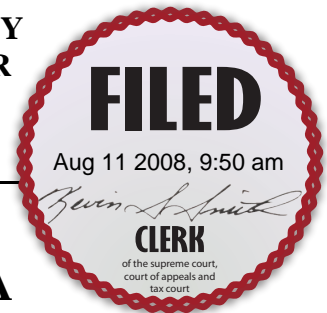
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IN THE
COURT OF APPEALS OF INDIANA

GAYLE PARKEVICH, Individually, as Successor)
Trustee and Beneficiary of Amendment and)
Restatement of Vernon Payne Inter Vivos Trust,)
and as Beneficiary of Vernon Payne and Elva Payne)
Irrevocable Trust for Beverly Draper,)

Appellant,)

vs.)

STEPHEN A. HARLOW, MARIBELLE G.)
HARLOW, and ERNST & YOUNG LLP,)

Appellees.)

No. 29A04-0711-CV-624

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable William Hughes, Judge
Cause No. 29D03-0505-CT-584

August 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Gayle Parkevich appeals from an order denying in part her motion to correct error and granting in part a motion for summary judgment filed by Stephen Harlow (“Stephen”), Maribelle Harlow (“Maribelle”), and Ernst & Young, LLP (“Ernst & Young”) (collectively “Malpractice Defendants”) regarding the justiciability of two claims in Parkevich’s amended professional negligence complaint. On appeal, we address a single issue,¹ namely, whether the trial court erred when it granted summary judgment to the Malpractice Defendants.

We affirm.

FACTS AND PROCEDURAL HISTORY

The relevant background facts are set out, in part, in our opinion in a related case, as follows:

Janet Best and Beverly Draper [“Draper”] are daughters of Vernon and Elva Payne. Parkevich and Paula Eller [“Eller”] are daughters of Beverly Draper. On June 2, 1989, Vernon and Elva Payne created the Vernon Payne and Elva Payne Irrevocable Trust for Beverly Draper (“Irrevocable Trust”). Also on June 2, 1989, Vernon created the Vernon Payne Inter Vivos Trust, which was twice amended and restated (“Vernon’s Trust”).

[Maribelle] Harlow is an attorney and practiced law with her husband, Stephen A. Harlow (“Stephen”), at the law firm of Harlow & Harlow. [Maribelle] provided certain legal services for Vernon and Elva. [Maribelle] left Harlow & Harlow in January 1990 to join the tax department of Ernst & Young as a certified public accountant and then advised Vernon and Elva regarding certain tax, accounting, and allegedly

¹ The Malpractice Defendants also argue in their respective briefs that the two claims that are addressed in the order on motion to correct error are barred (1) by the applicable statute of limitations and (2) because Parkevich failed to establish one or more of the required elements of the claims. Maribelle and Ernst & Young also argue that Parkevich’s claims are not recognized as independent causes of action under Indiana law. We need not address these arguments because of our threshold determination that the two claims at issue here are not justiciable.

legal matters. Stephen continued to provide legal advice to Vernon and Elva.

Elva died on February 10, 1995, and Vernon died on December 29, 1996. Their daughter, Janet Best, became the trustee of the Irrevocable Trust and Vernon's Trust upon Vernon's death. Parkevich, Eller, and Draper are beneficiaries of the Irrevocable Trust. Parkevich is named as successor trustee and a beneficiary of Vernon's Trust along with Draper and Eller.

Harlow v. Parkevich, 868 N.E.2d 822, 823-24 (Ind. Ct. App. 2007).

On October 22, 2002, in the Hamilton Superior Court, Parkevich filed a petition to docket trusts and a motion for accounting with respect to the Irrevocable Trust and Vernon's Trust (collectively "the Trusts"). On January 17, 2003, the Hamilton Superior Court transferred the case to the Carroll Circuit Court. On November 22, 2004, Parkevich filed her motion for leave to file a first amended petition to docket trusts ("First Amended Petition to Docket"). In the petition, Parkevich asserted additional claims, alleging breach of fiduciary duties, unjust enrichment, and conversion, and she sought the removal of Janet Best as trustee.

On March 8 and May 3-12, 2005, Parkevich, Eller, Gary Eller, Draper, and Best (individually and as trustee of the Trusts) executed a Mediated Settlement Agreement that settled all claims in the First Amended Petition to Docket. Under the Mediated Settlement Agreement, the signatories acknowledged that the Irrevocable Trust had previously been fully distributed and terminated, and they agreed to

forever release and discharge each other . . . of and from any and all manner of actions, causes of action, suits, accounts, contracts, debts, claims, and demands whatsoever, at law or in equity, and however arising, on or before the date of this release . . . that . . . involve the . . . trusts of Vernon or Elva Payne.

Appellant's App. at 137. The Mediated Settlement Agreement also provided: "Notwithstanding any other provision herein, [Parkevich] retains any and all rights and standing to file an action or assert a claim, if any, against Steve or Mary Harlow. . . ." Id. at 141. As a result of the Mediated Settlement Agreement, the parties to that action filed a joint stipulation of dismissal, which the trial court approved in May 2005.

Less than one month after the dismissal of the First Amended Petition to Docket, the remaining beneficiaries of Vernon's Trust, Best, Eller, and Draper, entered into a confidential settlement agreement ("Confidential Agreement"). On June 17, 2005, in Carroll County, Best filed a Petition to Approve Confidential Settlement Agreement and Terminate [Vernon's] Trust Pursuant to Indiana Code Section 30-4-3-24. On the same date, the court approved that petition.

Meanwhile, on May 24, 2005, Parkevich filed in Hamilton Superior Court the underlying complaint ("Malpractice Complaint") under Indiana Code Sections 30-4-3-15 and 30-4-3-21 against the Malpractice Defendants. The Malpractice Complaint alleged that the Malpractice Defendants had been negligent in rendering professional services to Best as trustee of the Trusts. The complaint alleges three claims based on services rendered in 1997, 1998, and 2002. On February 6, 2006, Ernst & Young and Maribelle filed a renewed motion for staying pending alternative dispute resolution, contending that all of Parkevich's claims in the Malpractice Complaint should be determined by arbitration. The trial court denied the motion for stay, and Ernst & Young and Maribelle appealed.

While the appeal regarding arbitrability was pending, on March 12, 2007, Ernst & Young and Maribelle filed a motion for summary judgment arguing that Parkevich lacked standing and did not satisfy the real party in interest requirements of Indiana Trial Rule 17. Stephen joined in that motion. On June 20, 2007, after a hearing, the trial court granted the summary judgment motion. The court found that Parkevich's claims in the Malpractice Complaint were not justiciable because Parkevich lacked standing and was not a real party in interest.

The following day, June 21, 2007, this court issued its decision in the appeal regarding arbitrability ("First Appeal"), holding that the 2002 claim in the Malpractice Complaint was subject to arbitration. Parkevich then filed in the trial court a motion to correct error with respect to the June 21 entry of summary judgment. In response, the trial court vacated the June 21 entry of summary judgment and ordered arbitration of the 2002 claim in the Malpractice Complaint in compliance with this court's opinion in the First Appeal. The court also granted Parkevich's motion to correct error in part to permit the court to reconsider the summary judgment motion regarding justiciability. Upon reconsideration, the trial court granted summary judgment in favor of the Malpractice Defendants on 1997 and 1998 claims in the Malpractice Complaint, finding, again, that Parkevich lacked standing and was not a real party in interest. Parkevich now appeals.²

² On July 23, 2007, after the Hamilton Superior Court entered its order on Parkevich's motion to correct error, Parkevich filed in the Carroll Circuit Court a petition to re-docket trusts and reform the Mediated Settlement Agreement. In a companion case to this appeal, Parkevich has appealed from the Carroll Circuit Court's denial of that petition. She filed a motion to consolidate that appeal with the appeal in this case. On December 21, 2007, this court denied the motion to consolidate appeals. However, we decide that case today and hand it down simultaneously with the instant opinion. See In re Vernon Payne and Elva Payne Irrevocable Trust, No. 08A02-0709-CV-803 (Ind. Ct. App. August 11, 2008).

DISCUSSION AND DECISION

Parkevich contends that the trial court erred when it granted summary judgment on the 1997 and 1998 claims in the Malpractice Complaint (“the claims” or “the non-arbitrable claims”). Our standard of review for summary judgment appeals is well established. Asbestos Corp., Ltd. v. Akaiwa, 872 N.E.2d 1095, 1096 (Ind. Ct. App. 2007) (citing Owens Corning Fiberglass Corp. v. Cobb, 754 N.E.2d 905, 908 (Ind. 2001)). An appellate court faces the same issues that were before the trial court and follows the same process. Id. The party appealing from a summary judgment decision has the burden of persuading the court that the grant or denial of summary judgment was erroneous. Id. When a trial court grants summary judgment, we carefully scrutinize that determination to ensure that a party was not improperly prevented from having its day in court. Id.

Summary judgment is appropriate only if the pleadings and evidence sanctioned by the trial court show that “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Id. (quoting Cobb, 754 N.E.2d at 909). On a motion for summary judgment, all doubts as to the existence of material issues of fact must be resolved against the moving party. Id. Additionally, all facts and reasonable inferences from those facts are construed in favor of the nonmoving party. Id. If there is any doubt as to what conclusion a jury could reach, then summary judgment is improper. Id.

Here, Parkevich contends that the trial court erred when it granted summary judgment. Specifically, Parkevich argues that the trial court erred in its construction of

the Mediated Settlement Agreement and, as a result of that construction, in its determination that Parkevich's legal malpractice claims were not justiciable because she lacked standing and was not a real party in interest. We agree with the trial court.

"The standing doctrine constitutes a significant restraint upon the ability of Indiana courts to act as it denies courts any jurisdiction absent actual injury to a party participating in the case." Jones v. Sullivan, 703 N.E.2d 1102, 1105 (Ind. Ct. App. 1998). "The plaintiff 'must demonstrate a personal stake in the outcome of the lawsuit and must show that he or she has sustained or was in immediate danger of sustaining, some direct injury as a result of the conduct at issue.'" Town of Georgetown v. Sewell, 786 N.E.2d 1132, 1137 (Ind. Ct. App. 2003) (quoting Higgins v. Hale, 476 N.E.2d 95, 101 (Ind. 1985)). Standing is similar to, although not identical to, the real party in interest requirement of Indiana Trial Rule 17. Id. (citing Pence v. State, 652 N.E.2d 486, 487 (Ind. 1995)). A real party in interest is the person who is the true owner of the right sought to be enforced. Id. Specifically, he or she is the person entitled to the fruits of the action. Id.

Here, Parkevich filed the Malpractice Complaint under Indiana Code Section 30-4-3-21, which permits a trust beneficiary to bring a claim "for the benefit of all beneficiaries" in the event the trustee refuses or is unable to do so.³ She also filed the

³ Indiana Code Section 30-4-3-21 provides:

If the trustee has a claim against a third person for which he may maintain a civil action under IC 30-4-3-15 but he is unable, unwilling or neglects to commence the action within a reasonable time not to exceed thirty (30) days after written demand, any beneficiary may commence the action in his own right for the benefit of all the beneficiaries.

(Emphasis added).

complaint as a trustee of Vernon's Trust pursuant to Indiana Code Section 30-4-3-15. We address justiciability as beneficiary and trustee in turn.

Justiciability as Beneficiary

In their summary judgment motion, the Malpractice Defendants argued that Parkevich lacked standing and was not a real party in interest to file the professional negligence action as a beneficiary of the Trusts. In support, they point out that Parkevich had released any and all interest in the Irrevocable Trust and Vernon's Trust under the Mediated Settlement Agreement. Parkevich counters that the determination regarding justiciability is based on the trial court's erroneous construction of the Mediated Settlement Agreement by the Malpractice Defendants and the trial court. Thus, to determine the justiciability of Parkevich's professional negligence claims filed under Section 30-4-3-21, we must construe the Mediated Settlement Agreement.

Construction of the terms of a written contract is a pure question of law for the court, reviewed de novo. Harrison v. Thomas, 761 N.E.2d 816, 818 (Ind. 2002). Construing language in a contract that would render any words, phrases, or terms ineffective or meaningless should be avoided. Indianapolis-Marion County Pub. Library v. Shook, LLC, 835 N.E.2d 533, 541-42 (Ind. Ct. App. 2005). Generally, the courts should presume that all provisions included in a contract are there for a purpose and, if possible reconcile seemingly conflicting provisions to give effect to all provisions. Id. Also, the contract should be read as a whole, and its terms should be interpreted to the extent that the provisions can be harmonized. Id.

Here, the Malpractice Defendants' argument regarding the lack of justiciability arises from construction of the Mediated Settlement Agreement. That agreement provides, in relevant part:

1. On or before 14 days after the Court's approval of this settlement, [Vernon's] Trust or Gary and Paula or Janet will pay to [Parkevich], in cash or its equivalent, the sum of \$837,500.00 (the "Settlement Sum").
2. The parties acknowledge that the [Irrevocable] Trust has been previously fully distributed and terminated. Janet will assert no additional compensation for her duties as Trustee of [Vernon's] Trust or the Irrevocable Trust or in any other fiduciary capacity related to Vernon and Elva Payne.
3. [Parkevich] will be permitted to use the portion of the improvements on the farm real estate she currently uses for the operation of her beauty shop, without rent, so long as she continues to operate her beauty shop. The parties agree to file such documents, in the form of a license or otherwise, so the right described in this paragraph will run with the land to which it is attendant.
4. Without admitting liability, the parties consent to [Parkevich's] allocation of the Settlement Sum to attorneys' fees, reimbursement for litigation expenses, sums paid to settle alleged breaches of fiduciary duties and the sale of her remainder interest in [Vernon's] Trust for purposes of [Parkevich's] tax filings.
5. John Cremer, Esquire will prepare and the parties will execute and file the following pleadings:
 - a. On or before ten (10) days after the date hereof a petition to approve Compromise of Adjudicated Claim ("Compromise") and related pleadings memorializing this settlement. Prior to the filing thereof, counsel for [Parkevich] will provide consents to this settlement agreement executed by [Parkevich's] adult living children. The petition to approve the Compromise will include such rhetorical paragraphs as are necessary to request an order disposing of any and all interest of [Parkevich] and her issue in any of the Vernon and Elva Payne estates and trusts. This settlement is expressly conditioned upon the termination of interest of [Parkevich]

and her issue in any estate or trust of Vernon or Elva Payne. and [sic]

b. Subject to Court approval of the Compromise[,]payment of the Settlement Sum, and performance of the other elements of the settlement, a dismissal with prejudice of the Complaints or Petitions pending under this cause number.

6. Intentionally omitted.
7. This settlement is expressly conditioned upon Paula's acquisition of favorable tax opinions as to the treatment of the settlement herein. They agree to acquire that tax opinion within 10 business days hereof. The parties agree to negotiate in good faith, in the event that the tax opinion suggests an unfavorable tax result to any party hereto.
8. The mediator will file necessary pleadings with this Court to report settlement of mediation.
9. The following parties will divide and be responsible for payment of the mediator's fee as follows:

Gayle Parkevich	- 1/4
Janet Best, as Trustee of [Vernon's] Trust and the Irrevocable Trust	- 1/4
Paula Eller	- 1/4
Beverly Draper	- 1/4

10. The above-described responsibilities to perform the settlement agreed to herein is [sic] hereinafter referred to herein as the "Compromise". Gayle Parkevich, Janet Best, as Trustee of the Irrevocable Trust and [Vernon's] Trust, Paula Eller, Gary Eller, and Beverly Draper, (hereinafter "Signatories"), conditioned upon and for and in consideration of the Court's approval of and the performance of the Compromise, the sufficiency of which is hereby acknowledged, hereby forever release and discharge each other, their heirs, personal representatives, attorneys and assigns, none of whom admit any liability to the Signatories, but all dispute any liability to the Signatories, of and from any and all manner of actions, causes of action, suits, accounts, contracts, debts, claims, and demands whatsoever, at law or in equity, and however arising, on or before the date of this release, including but not limited to, all matters asserted, or which could have been asserted, by any of the

Signatories in that certain actions pending in the Carroll County Circuit Court [sic], State of Indiana, as above entitled under Cause no. 08C01-0302-TR-1 or that otherwise involve the estates or trusts of Vernon or Elva Payne.

11. It is understood and agreed that the performance of the Compromise is not to be construed as an admission of liability and that performance of the terms of the Compromise is made and accepted in full accord and satisfaction of, compromise of, any and all disputes, that do, or may exist, between the Signatories and for the purpose of terminating all such disputes and associated litigation.

* * *

18. Notwithstanding any other provision herein, [Parkevich] retains any and all rights and standing to file an action or assert a claim, if any, against Steve or Mary Harlow. [Parkevich] agrees to give Janet and Paula notice of the commencement of any action against Steve or Mary Harlow.

Appellant's App. at 135-41 (emphases added).

Parkevich contends that the release of her interest in the trusts, as set forth in the Mediated Settlement Agreement, is modified by the "savings clause" in Paragraph 18. In Paragraph 18, she purported to "retain any and all rights and standing to file an action or assert a claim, if any, against Steve or Mary Harlow." Id. at 141. The Malpractice Defendants counter that Parkevich lacked standing to maintain an action against the Malpractice Defendants because she had released all of her interest in the Trusts pursuant to Paragraph 5a of the Mediated Settlement Agreement. Further, the Malpractice Defendants note that, under Paragraph 10 of the Mediated Settlement Agreement, Parkevich and the remaining beneficiaries had released each other and severed their relationship arising from the Trusts. Thus, they contend that the parties to the Agreement

had not contemplated that Parkevich would file suit on behalf of the remaining beneficiaries.

To resolve this dispute requires that we harmonize the so-called “savings clause” with other relevant provision of the Mediated Settlement Agreement, specifically the Compromise paragraphs and the releases in Paragraph 10. When the “savings clause” is read together with these other provisions, it becomes apparent that the savings clause is tantamount to an assignment by the remaining beneficiaries to Parkevich of the right to pursue a legal malpractice action.⁴ But “no legal malpractice claims may be assigned, regardless of whether they are assigned to an adversary,” Rosby Corp. v. Townsend, Yosha, Cline & Price, 800 N.E.2d 661, 667 (Ind. Ct. App. 2003) trans. denied, because the assignment of legal malpractice claims is invalid as against public policy, id.; Picadilly, Inc. v. Raikos, 582 N.E.2d 338, 339 (Ind. 1991). Thus, we conclude that Paragraph 18 is invalid as against public policy.

Where a provision in a contract is invalid as against public policy, courts may employ the blue pencil doctrine to delete from the agreement the invalid provision. See Cent. Ind. Podiatry, P.C. v. Krueger, 882 N.E. 723, 730 (Ind. 2008) (applying blue pencil doctrine to noncompetition agreement); City of E. Chicago v. E. Chicago Second

⁴ When the Settlement Agreement was executed, Parkevich had no beneficial interest in the Irrevocable Trust, which had previously been terminated. Although Parkevich had a present interest in the use of certain real estate held in Vernon’s Trust, her interest in the remainder of the trust property was contingent upon the death of her mother, Draper. Thus, aside from her right to use certain real estate in Vernon’s Trust, Parkevich had no present beneficial interest in that trust. As a result, the purported assignment of the malpractice claim cannot be characterized as a distribution of trust property. We express no opinion whether the malpractice claim could have been transferred to Parkevich as a distribution of trust property if she had had a present beneficial interest in that trust aside from the real estate.

Century, Inc., 878 N.E.2d 358, 373 (Ind. Ct. App. 2007) (explaining the blue pencil doctrine but finding it could not be applied to reform the agreements at issue).

Under that doctrine, if a covenant is clearly separated into parts and some parts are reasonable and others are not, the contract may be held divisible and the reasonable restrictions may be enforced. . . . Blue-penciling must be restricted to applying terms that already clearly exist in the contract; a court's redaction of a contract may not result in the addition of terms that were not originally part of the contract. "Simply put, if practicable, unreasonable restraints are rendered reasonable by scratching out any offensive clauses to give effect to the parties' intentions."

E. Chicago Second Century, Inc., 878 N.E.2d at 374 (internal citations omitted). For example, if a noncompetition agreement is overbroad and it is feasible to strike the unreasonable portions and leave only reasonable portions, the court may apply the blue pencil doctrine to permit enforcement of the reasonable portions. Krueger, 882 N.E.2d at 730.

Because we have concluded that the "savings clause" in Paragraph 18 is invalid as against public policy, that paragraph cannot be enforced. Under the blue pencil doctrine we next determine whether that paragraph is divisible from the rest of the Mediated Settlement Agreement so that the rest of the agreement may be enforced. To that end, we note that Paragraphs 1 through 9 constitute the "Compromise" as defined in the agreement. The releases in Paragraph 10 are conditioned upon completion of the other terms in the Compromise. Thus, the thrust of the agreement appears to be the settlement of all claims among the beneficiaries, Parkevich's relinquishment of any interest in the Trusts, payment of \$837,500 to Parkevich, and the performance of other provisions set out in Paragraphs 1 through 9. Paragraph 18 is linked to the rest of the agreement by the introductory phrase "Notwithstanding any other provision herein[.]" Appellant's App. at

141. But that paragraph, by both its location relative to the other operative paragraphs of the Compromise and the internal references in Paragraphs 1 through 9 as a set of terms to be performed, is severable from the rest of the Mediated Settlement Agreement. Therefore, we shall enforce the remainder Mediated Settlement Agreement after striking Paragraph 18.

As the trial court noted in its June 20 order granting summary judgment and its October 22 order on Parkevich's motion to correct error, Parkevich relinquished all interest in the Trusts and mutually released any and all claims against the other beneficiaries and the trustee arising from the trusts.⁵ That relinquishment and the mutual releases became effective no later than June 17, 2005, when Best filed the petition to approve the confidential settlement agreement and to terminate Vernon's Trust, alleging that all of the terms of the Compromise in the Mediated Settlement Agreement had been performed. Thus, whether Parkevich had standing when she filed the Malpractice Complaint on May 24, 2005, she had lost standing by June 17, 2005. See Ind. Code § 30-4-3-21. Likewise, at the point when Parkevich's relinquishment of all interest in the Trusts became effective (again, no later than June 17, 2005), Parkevich was no longer the real party in interest because, without an interest in the Trusts, she was not entitled to the fruits of the malpractice action.

⁵ The trial court's June 20 summary judgment order and October 22 order on Parkevich's motion to correct error contain a thorough analysis of the issues arising in this case. We compliment and appreciate the trial court's detailed work on the varied germane and relevant issues. However, we need address only whether the two non-arbitrable claims in the Malpractice Complaint were justiciable in order to resolve the issues raised in this appeal.

No later than June 17, 2005, Parkevich had lost standing and was no longer a real party in interest with respect to any malpractice claims arising from the Malpractice Defendants' alleged professional negligence. Her attempt to retain or create standing under Paragraph 18 of the Mediated Settlement Agreement fails because it purports to assign a legal malpractice claim, which is prohibited. See Rosby Corp., 800 N.E.2d at 667. Thus, we conclude that the trial court did not err when it granted summary judgment to the Malpractice Defendants regarding the two claims in the Malpractice Complaint that are not subject to arbitration on the ground that Parkevich lacked standing and was not a real party in interest.

Justiciability as Trustee

Parkevich also contends that she had standing under Indiana Code Section 30-4-3-15 and was a real party in interest because she is a trustee of Vernon's Trust.⁶ In support she points out that "[u]nder the Indiana Trust Code, the term 'trustee' is defined to include 'an original, additional, or successor trustee, whether or not appointed or confirmed by a court.'" Appellant's App. at 127 (emphases original). But, as noted by the trial court, the "polestar for construing trust provisions is the intent of the settlor." In re Walz, 423 N.E.2d 729, 733-34 (Ind. Ct. App. 1981). "The 'intent' relevant to the construction of [an] inter vivos trust terms is that held by the settlor at the time the trust was executed." Id. at 734.

When Vernon Payne established Vernon's Trust in 1989 and last amended it in 1995, a trustee could "maintain in his representative capacity a civil action for any legal

⁶ Indiana Code Section 30-4-3-15 provides: "The trustee may maintain in his representative capacity a civil action for any legal or equitable remedy against a third person that he could maintain in his own right if he were the owner."

or equitable remedy against a third person that he could maintain in his own right if he were the owner.” Ind. Code § 30-4-3-15 (LEXIS 1995). At that time, the Indiana Code defined “trustee” as “the person who is charged with the responsibility of administering the trust and includes a successor or added trustee.” Ind. Code § 30-4-1-2(15) (LEXIS 1995). Indiana statutory law did not include potential successor trustees in the definition of “trustee.” Thus, when Vernon last amended Vernon’s Trust, he intended only for trustees, confirmed successor trustees, and confirmed added trustees to have the capacity to file suit on behalf of the trust.

Parkevich was only a potential successor trustee of Vernon’s Trust, because she was never confirmed by the court as trustee. Thus, Parkevich does not qualify as a “trustee” under the definition that applied when Vernon Payne last amended Vernon’s trust. Because she does not qualify as a trustee, she does not have standing to pursue the professional negligence claims against the Malpractice Defendants.

Affirmed.

BAILEY, J., and CRONE, J., concur.